

# Public Information Disclosure in the Salt Import Trading System in Indonesia

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**Abstract.** This study comes to the conclusion of a juridical analysis which proves that legal hierarchies in Indonesia is a medium to hide ambiguous materials that are not in line with higher level legislation. There are some recommendations given in this research. First, there must be a legal instrument that guarantees the linearity of the content material that is able to guard the content of the legislation, so that it does not deviate from the initial design. Second, this research shows that the judicial review instrument is not effective enough to guarantee the linearity of the content of the legislation. Third, the State Administrative Courts with very narrow and limited absolute competence are inadequate to review the government's actions as a whole. Therefore, legal construction of the competence of the State Administrative Courts needs to be reviewed in order that they are able to represent the function of administrative law as a control over government actions and the use of authority.

**Keywords:** Disclosure, Salt Import Trading System, Public Information.

## 1 Introduction

The application of the Geomaritime community for the fate of salt farmers in the midst of the invasion of imported salt has not shown the expected results after the Constitutional Court Verdict No. 32-PUU-XVI-2018 which decided that the application was not accepted; the verdict decided the application to test the suitability of no. 6 of 2017 concerning the Protection and Empowerment of Fishermen, Fish Cultivators, and Salt Farmers against the 1945 Constitution. The application cannot be accepted based on Law no. 6 of 2017 concerning the Protection and Empowerment of Fishermen, Fish Cultivators, and Salt Farmers, does not mean that Indonesia's domestic salt market is doing well. The results of interviews with groups of salt farmers in the villages of Pinggirpapas and Karang Anyar, Kalianget District, Sumenep Regency concluded that what the government wants and what the salt farmers hope has not met a common ground. The weakness of domestic salt production is acknowledged by all parties; the NaCl content which is less than the expected level of >97%.

Various problems in local salt production related to NaCl content, seasonal constraints and production volumes that do not meet the total volume of national demand which is more than 2 million tons per year do not legitimize the government to issue salt import permits without control. Control of imported salt commodities is regulated in Government Regulation no.

9 of 2018 concerning Procedures for Controlling Imports of Fishery Commodities and Salt Commodities as Raw Materials and Industrial Auxiliary Materials. But in fact, the Regulation of the Minister of Maritime Affairs and Fisheries No. 66 of 2017 concerning Control of Imports of Salt Commodities and Regulation of the Minister of Trade No. 63 of 2019 concerning Provisions on the Import of Salt simultaneously deviates from what is regulated by the Government Regulation No. 9 of 2018 concerning import control.

Article 38 of Law no. 6 of 2017 confirms that everyone is prohibited from importing salt commodities that are not in accordance with the place, type and time of entry, and or the mandatory quality standards set by the minister. On the other hand, the provisions in the Regulation of the Minister of Trade No. 63 of 2019 concerning Provisions on the Import of Salt states that all provisions on import restrictions as regulated in Law No. 6 of 2017 and Government Regulation No. 9 of 2018 concerning Import Control Procedures is negated by the provisions of Article 27 of the Regulation of the Minister of Trade which states that if necessary, the Minister may exclude the provisions stipulated in this Ministerial Regulation after coordinating with the relevant ministries/non-ministerial government agencies. The provisions of Article 27 of the Minister of Trade Regulation No. 63 of 2019 automatically annuls the substance of Government Regulation No. 9 of 2018 concerning Import Control Procedures related to compliance with the place, type, time of entry, and or

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quality standards. All of these provisions become invalid.

In addition to making all the provisions in the Government Regulation useless in the provisions of Article 10 of the Minister of Marine Affairs and Fisheries Regulation No. 66 of 2017, there are regulatory substances that graduate import control by opening up opportunities to import salt other than as industrial raw materials (consumption salt). The gradation of controlling substance is getting to its lowest point until it reaches the level of liberalization of the salt market. The regulation of the Minister of Maritime Affairs and Fisheries stipulates that the import of consumption salt is only exclusively owned by SOEs, however in the Regulation of the Minister of Trade, it is deviated by opening up imports of consumption salt not only owned by SOEs but also private importers. The liberalization of the salt market can be found in the series of Minister of Trade Regulation No. 63 of 2019 Article 2 paragraph (2), Article 5 paragraph (1) related to the legitimacy of imported salt as raw materials and industrial auxiliary materials, while in Article 2 paragraph (3), Article 5 paragraph (2) regarding the basis for the legitimacy of imports of consumption salt. The assessment of the liberalization of the domestic salt market can be seen from the gradation of control norms regulated in Government Regulations, there is also a gradation in the Minister of Maritime Affairs and Fisheries Regulation where imports of consumption salt are only intended for SOEs, but in the Minister of Trade Regulation, this opportunity is not only given to SOEs, but also to private sector.

With the opening of salt import opportunities in the Minister of Trade Regulation No. 63 both for industrial salt and consumption salt and the negation of all control instruments stipulated in Government Regulation no. 9 of 2018, it is almost certain that the government only conducts an inventory of salt market data without having any meaningful instruments to control it. The mechanism regarding import permits is regulated in Article 6 paragraph (1) for salt as an industrial raw material, only requiring a Business Identification Number as a Producer Import Identification Number, industrial business licenses, distribution statements and recommendations from the Ministry of Trade. Meanwhile, the provisions for licensing the import of consumption salt require a Business Identification Number as an Import Identification Number, a distribution statement, and a recommendation from a ministry certificate. There are 4 (four) or 3 (three) salt import licensing requirements, and import control instruments which only consist of distribution statements and ministerial recommendations.

What control does the government have over the two uncontrollable documents? The distribution statement expresses the will of business actors in marketing imported salt commodities and does not represent government control over distribution, nor does it represent control over local salt absorption. Meanwhile, the provisions for the recommendation of a ministerial certificate in Article 9 of the Regulation of the Minister of Trade only contain a. amount and type of Salt; b. Tariff Post/HS and description of goods; c. loading port;

d. country of origin; e. destination port; and f. validity period. Salt Import Approval, all of which are not subject to the applicable provisions because Article 27 of the Minister of Trade Regulation 63 of 2019 authorizes the ministry to deviate by stating that if necessary, the Minister may exclude the provisions stipulated in this Ministerial Regulation after coordinating with the ministry/institution that are non-ministerial government. This changing substance situation makes the salt market no longer express the ideal of Article 33 of the 1945 Constitution which is oriented to the greatest welfare of the people and also does not express the will of the precepts in Pancasila, especially the 5th principle of Social Justice for All Indonesian People. Salt import control is more accurately referred to as salt import regulation because there is no instrument that can be used by the government as an instrument of control.

## **2 Disclosure Of Public Information in Salt Import Commercial Procedures**

Law Number 14 of 2008 concerning Public Information Disclosure is the hope of all Indonesian citizens for the rights of public information, including disclosure of information in the salt trade system. The results of interviews with groups of salt farmers show that the protection and empowerment of salt farmers as stated in Law no. 7 of 2016 in the form of facilities and assistance are not really needed by farmers. For them, favorable government policies are far more important than temporary gifts.

Openness to the policy of the salt trade system is the hope of all parties to resolve all problems in the salt import policy. The public information disclosure in Indonesia, according to the 2020 Information Commission annual report, is the compliance of Public Agencies with the 2015-2019 Public Information Disclosure Act, which is based on their participation in returning the Monitoring and Evaluation of Public Information Disclosure questionnaires. The highest participation of Public Agency was in 2019; of the 355 Public Agencies that registered through e-Monev, there were 74.37% or 264 Public Agencies participating. [1] Regarding the standards for measuring compliance with the Public Information Disclosure Act, it is very strange that the assessment is based on compliance in returning the questionnaire. This compliance assessment should be based on user assessments (citizens who use public services) with clear standards based on the Public Information Disclosure Act.

The compliance of e-Monev questionnaires for Public Agencies of 74.37% is a worrying number if it is only based on responses of returning the questionnaires, it is conceivable that the compliance rate of Public Agencies will decline if the obligation imposed is more than that, such as the obligation to show documents that are available at all times, immediately, periodically, and information that is not excluded, will the Public Agencies respond? If by returning the e-Monev questionnaire, the compliance rate is only 74.37%, then what will the compliance rate be if data and facts on the

availability of public information in real terms must also be shown?

Survey conducted by the Information Commission shows worrying figures, including the achievement of indicators for Public Agencies that fall into the "quite informative" category in 2019 of 14.93% (according to the table). Many of the Public Agencies in the Information Commission's survey are "less informative" and even have the predicate as "uninformative", which is 64.79%. Public Agencies that are not informative are predominantly occupied by SOEs which indicate a low level of compliance in implementing public information disclosure. [1]

The assessment of compliance with public information disclosure should make the public as users and parties served by the Public Agency, not as a survey of the bureaucracy, there is a very fatal logical fallacy in placing survey standards in this regard. The results of the Information Commission's survey should not be used as a reference for compliance with public information disclosure. Unfortunately, the 2015-2019 Public Information Commission Report does not set this as a reference standard. The public as users of public information is, in this case, used in assessing the understanding of public information disclosure in terms of the election process. Again, this is a double standard. The use of public understanding of the general election process is once again a counterproductive situation, because the general election process can be assessed as a 5 (five) yearly moment which is in the interests of the political elite, hence it is almost certain that the socialization and information flow of public understanding, especially constituents, are the interests of the stakeholders so that the parameters of public information disclosure in the election process cannot be used as a reference for assessing information disclosure. The assessment of public information disclosure that makes the public as users of information should be measured using the public service standard of information disclosure, not using the standard of openness in the election process. The community is much more in need of public service standards to meet their daily needs compared to information on the election process which is merely the need of political elites to reoccupy the position as officials.

The issue of information disclosure, although it may not occur in other aspects, is quite worrying to describe. The annual report of the Information Commission, which is highly expected by the public, can be a reflection of the condition of information disclosure, especially in the salt import trading system which needs serious improvement. This openness is very much needed, especially by salt farmers, as well as real forms of legal protection for domestic salt commodity products. Laws that are supposed to protect and empower the community, as well as Government Regulations that should be able to regulate import control, do not reflect the spirit of protection according to the title of the legislation itself. On the contrary, the two laws and regulations are giving false hope to the community without any meaningful instrument to defend the right to economic protection from state abuses.

### 3 Public information disclosure in law no. 5 of 1986

There are many perceptions of the establishment of disclosure of public information after the enactment of Law no. 14 of 2008 concerning Public Information Disclosure, for example, **Agus Setiawan *et al.***, in his article entitled "Implementasi Kebijakan Keterbukaan Informasi Publik (Analisis Kritis Implementasi Kebijakan Keterbukaan Informasi Publik di Pemerintah Kota Bandung kepada Warga Kota)". [2]. **Edwin Nurdiansyah** in an article entitled "Keterbukaan Informasi Publik sebagai Upaya Mewujudkan Transparansi bagi Masyarakat" perceives that after the enactment of Law no. 14 of 2008 concerning Public Information Disclosure (KIP), all Indonesian citizens should be guaranteed the right to information. This law is the legal basis for the fulfillment of the rights of every citizen to obtain information on state administration. [3] **Tiara Indah and Puji Haryani**, in the article "Implementasi Kebijakan Keterbukaan Informasi Publik pada Dinas Kominfo Kota Tasikmalaya" also have a similar perception, they argue that SOPs are available but when information is confirmed to the public, community members who become the research informants stated that the information in the media did not meet the needs of public information, thus people had to go to the sub-district office to get more complete information.

**Endang Retnowati**, in the article "Keterbukaan Informasi Publik dan Good Governance (antara Das Sein dan Das Sollen)" stated that the Central Public Information Commission has not yet fully carried out its functions, even in some of its actions, it tends to hamper and also hinder the public's right to obtain information. [4] Further disclosure of public information is an acknowledgment of human rights. [5] State administrative law is a legal instrument that has the function of controlling the use of authority, and realizing harmonious relations between the government and society or society and the state. Administrative law has a significant role in maintaining the balance of public information disclosure so as not to threaten individual privacy and the need for confidentiality. [6] Disclosure of information requires clarity of arrangement so that there is no gray area in terms of information. For example, regarding the state budget, although it is sensitive information, the Public Agencies have begun to understand that budget is one of the important points that must be disclosed to the public. [7]

The backbone of the provisions of administrative law in Indonesia is contained in the provisions of Law no. 5 of 1986 concerning the State Administrative Court, which was later amended by Law no. 9 of 2004 concerning Amendments to Law no. 5 of 1986 concerning the State Administrative Court. The law contains material provisions and formal provisions of State Administrative Law. State administrative law in Indonesia cannot function much in relation to any violations committed by the government as the basic competence of the State Administrative Court only covers a narrow area of government action. [8]

Government actions consist of 6 (six) types in the P de Han government action division chart, (Hadjon, Cet-8, 2002) The Administrative Court only reviews government actions that are written, concrete, individual, and final. Not all government actions are contained in written form, nor are they individual actions, in fact these government actions are more dominantly actions aimed at the public. Disclosure of public information is an example that, when the State Legal Entity does not carry out its duty to provide public information, then by itself it cannot be sued for violations committed by the government agency in the Administrative Court, the Administrative Court can not give the public rights to information as the government's actions are not always in written form and are not always directed at individuals, nor are they always final and concrete, the State Agency may only be passive and silent, not giving the response it should or it may also be in the form of making up excuses to buy time and end up not providing public information which should be their duty and function to provide in the first place.

The attitude of Public Agency that does not carry out its duties and functions in providing public information is more suitable to be included in the government's real actions, rather than in the category of written, concrete, individual, final actions as in the State Administrative Decisions (KTUN). The regulation of the State Administrative Court (PTUN) competence, which is as narrow as the disputes arising from the issuance of the KTUN -which is written, individual, concrete, final-, as stated in Article 1 point 4 and Article 47 of Law no. 5 of 1986 concerning the State Administrative Court, caused the government take concrete actions in the form of not providing information to the public; that is unable to be reviewed by the State Administrative Court. This gives the conclusion that the unavailability of public information by public agencies is a real government action that was not reviewed by laws and regulations until 2011, as evidenced by Supreme Court Regulation no. 2 regarding public information disputes, which was just published in 2011.

Supreme Court Regulation No. 2 of 2011 concerning public information disputes does not merely provide an extension of competence to adjudicate the State Administrative Court, hereinafter abbreviated as PTUN. Public Information Dispute is the impact of incomplete regulation regarding the disclosure of public information which is regulated in Law No. 14 of 2008 concerning Public Information Disclosure. The Law on Public Information Disclosure, hereinafter abbreviated as UU KIP, regulates the mechanism for public information disputes with a very long chain of settlement procedures that lead to a settlement for parties who are still not satisfied to file a lawsuit on information disputes to the judiciary. The Law on Public Information Disclosure was ratified and promulgated in 2008 but it was not until the 2011 that the public information dispute in court received legal certainty regarding the procedure for filing a dispute, the Supreme Court Regulation No. 2 of 2011 concerning Procedures for Settlement of Public Information Disputes.

The State Administrative Court has additional competence to adjudicate information disputes through

the provisions of Article 3 of Supreme Court Regulation no. 2 of 2011, which divides the competence of information dispute resolution into two, namely the competence of the District Court and the competence of the State Administrative Court. District Courts have the competence to adjudicate disputes submitted by '*Public Agencies*' other than '*State Public Agencies*' and/or applicants requesting information from '*Public Agencies*' other than '*State Public Agencies*', while Administrative Courts have the competence to adjudicate disputes submitted by '*State Public Agencies*' and/or applicants requesting information from '*State Public Agencies*'.

## 4 Literature Review

The use of difficult-to-understand terminology in Law no. 14 of 2008 concerning Public Information Disclosure and Supreme Court Regulation no. 2 of 2011 concerning information disputes, becomes an obstacle in efforts to realize information disclosure. The use of terms in the Public Information Disclosure Act which is divided into 5 classifications is ambiguous, this includes "Information that must be provided and publish regularly", "information that must be announced immediately", "information that must be available at all times", "excluded information", and "not excluded information".

The ambiguous terms that appear in the Supreme Court Regulations are the same as those in the Public Information Disclosure Act regarding the use of the term "*Public Agency*". The Law on Public Information Disclosure only introduces the term '*Public Agency*' with a very clear understanding in general provisions, that a '*Public Agency*' is an executive, legislative, judicial and other body whose main functions and duties are related to the administration of the state, the funds of which are partly or wholly sourced from State Revenue and Expenditure Budget and/or Regional Revenue and Expenditure Budget, or non-governmental organizations as long as part or all of their funds are sourced from the State Revenue and Expenditure Budget and/or Regional Revenue and Expenditure Budget, public contributions, and/or abroad. However, Article 42 goes beyond what is described in Article 1 of the general provisions, new terms emerge, namely '*Public Agency*' and '*Non-Public Agency*'.

The use of the terms '*State Public Agency*' and '*Public Agency*' is confusing. Is the '*State Public Agency*' an executive agency? register? judiciary, and other bodies whose main functions and duties are related to the administration of '*Oeregi*', whose funds are partly or wholly sourced from the State Revenue and Expenditure Budget and/or Regional Revenue and Expenditure Budget? (the question mark is according to the original text on the internet). Entities other than Public Agency are State-Owned Enterprises, Regional-Owned Enterprises, non-governmental organizations and political parties whose funds are partially or wholly sourced from the State Revenue and Expenditure Budget? '*Eregi*' and/or Regional Revenue and Expenditure Budget, public contributions, and/or

abroad? (the question mark is the original symbol found in the regulatory text on the internet).

The use of parameters between '*State Public Agency*' and '*Public Agency*' is very unclear, obscuring the essence of protecting public information disclosure itself, especially when SOEs and ROEs fall into the category of '*Public Agency*' and not '*State Public Agency*' whose competence in resolving public information disputes is included in the competence of state courts. First, this is not in line with the provisions in Law no. 17 of 2003 concerning State Finances which include SOEs and ROEs in public entities that are subject to public law so that they are obliged to submit to the supervision of the State Audit Board (BPK). Second, this is contrary to the provisions of Article 24 of Law no. 17 of 2003 concerning State Finance which places State Budget intervention as a form of capital restructuring for the company's health. Third, the prominent difference between district courts and State Administrative Courts is the activeness of judges and the laying of the burden of proof. The difference in characteristics between the district courts and State Administrative Courts is a difficult thing that even adds layers of difficulty in realizing public information disclosure in Indonesia.

The challenge of public information disclosure is increasingly difficult to realize in the absence of support in the administrative law justice mechanism for real government actions (factual actions) to encourage openness. The government's real actions referred to above are government actions that actually cause harm to the community, in Article 87 letter A of Law no. 30 of 2014 concerning Government Administration is referred to as a factual act. Tri Cahya Indra Permana appointed Jurisprudence on the Decision of the Supreme Court of the Republic of Indonesia Number 144 K/TUN/1998 dated September 29, 1999 regarding the government's factual actions. (Permana, 2016) The decision of the Supreme Court of the Republic of Indonesia Number 144 K/TUN/1998 dated September 29, 1999 is in an illogical ratio. What matters here is the issuance of the Supreme Court's decision with the ratification of the State Administrative Law in 1998 and 2014 which is 16 years apart. The spirit of the State Administrative Law which was passed in 2014 is the expansion of adjudicating the State Administrative Court. Meanwhile, the decision of the Supreme Court of the Republic of Indonesia which was published in 1998 is appointed as jurisprudence for factual government actions that carry a conventional spirit and tend to limit the authority of the State Administrative Court within the scope of its competence to adjudicate which is limited to State Administrative Decisions that are written, concrete, individual, final, as provisions in Law no. 5 of 1986.

Article 87 of the AP Law has the spirit of expanding the competence to adjudicate State Administrative Courts, one of which is a letter that reads Expansion of Adjudicating State Administrative Courts includes written stipulations which also include factual actions. The decision of the Supreme Court of the Republic of Indonesia Number 144 K/TUN/1998 dated September 29, 1999 regarding the factual actions of the government

that represent the spirit of Law no. 5 of 1986 tends to narrow the competence of the State Administrative Court, while the 2014 AP Law brings the spirit of renewal and expanding the competence of the State Administrative Court, hence the interpretation of the extensification of Article 87 letter a regarding factual actions of the government is not appropriate if it refers to the jurisprudence of the Decision of the Supreme Court of the Republic of Indonesia, published in 1998, because it has a different content, in addition to the irrational relevance of the year the decision was issued and the year the law was passed.

Philippus M Hadjon, in an article entitled "Peradilan Tata Usaha Negara menurut UU No. 5 Tahun 1986 antara harapan dan permasalahan" published in the *Juridika Legal Journal* in 1987 wrote a number of issues that were expected to emerge as legal issues in administrative law. The article was written exactly a year after the enactment of Law no. 5 of 1986 concerning the State Administrative Court. Philippus explained a very clear difference regarding the competence of the State Administrative Court in Indonesia which is a representation of one of the competencies of the State Administrative Court in the Netherlands. The competence of the State Administrative Court in the Netherlands itself consists of 4 rooms (divisions) of judicial competence, one of which is the competence of the Decisions of State Administration.

First, Philippus Hadjon's description at least informs that the competence of the State Administrative Court is not only to review state administrative decisions as its conventional competence in Law 5 of 1986, secondly, M Hadjon's writing informs the public that there are still competencies of the State Administrative Court other than the decision itself, such as real government actions or factual actions as stipulated in Article 87 letter a of the State Administrative Law. Third, the limited competence of the existing State Administrative Courts in Indonesia, which only has one type of competence, can lead to the conclusion that there are still many types of government actions other than State Administrative Court decisions which are ultimately not reviewed by the State Administrative Court.

Government actions that cannot be reviewed by the State Administrative Court cause administrative law, as a control over the use of government authority, to not function properly. This can be proven by the regulation of the salt trading system which contradicts the spirit of Article 33 of the 1945 Constitution of the Republic of Indonesia whose main goal is the greatest prosperity of the people. The government regulations that allow for local salt commodities, but regulate imported salt commodities in such a way, have caused the imported salt can no longer be controlled. Control of salt import activities as a real action or factual government action cannot be carried out by the State Administrative Court. The State Administrative Court cannot play a role in controlling the use of government authority which functions inappropriately, this is because the legal construction of the State Administrative Court is not designed to control the use of government authority in a broad sense.

Adrian Berner in his book entitled “Peradilan Tata Usaha Negara di Indonesia”, emphasized that there were other doubts, which did not arise in Indonesia but in the Netherlands, regarding the fact that the procedures in the State Administrative Court in Indonesia were based on the Dutch AROB procedures, which were enforced in 1976. Although it received much praise from Dutch legal experts as the realization of the rule of law, the AROB system was not fully successful and in 1994, it was replaced by a broader system of materials testing. [8] Draft Law No. 5 of 1986 uses the concept of *Beschikking* or decisions of State Administration addressed to individuals as the starting point for the authority of the State Administrative Court. This is in accordance with the jurisdiction of AROB in the Netherlands, but is a concept that is limited to the actions of authorities and general decisions which are clearly placed outside the authority of the State Administrative Court. This would jeopardize legal certainty and allow state officials to evade judicial power. The AROB system in the Netherlands itself was not considered fully successful and in 1994 it was replaced by a broader system of materials testing. [8]

In 1994, the Netherlands -where Indonesia explored the concept of administrative law- has improved and expanded AROB’s competence, this can be a reflection that there is an urgency for Indonesia to also expand the scope of administrative law so its functions can be carried out properly; as a control over the use of authority.

## 5 Conclusion

The principle of public information disclosure still needs to be monitored continuously, encouraging the disclosure of public information cannot only stop at the promulgation of Law no. 14 of 2008 concerning the disclosure of Public Information and the establishment of Information Commissions in various regions. These two things, namely the Law on Public Information Disclosure and the Information Commission are only symbolic tools, not the openness itself. Therefore, in an effort to realize information disclosure, existing tools must be maximized, as well as revamping legal construction so that there are no deviations in the course of the series of laws and regulations down to the lowest level of regulations that are concrete and technical and are in direct contact with the community.

This study comes to the conclusion of a juridical analysis which proves that the hierarchical series of laws in Indonesia is to hide ambiguous materials that are not in line with higher-level laws and regulations. Government Regulation No. 9 of 2018 concerning Control of Imports of Fishery Commodities and Salt Commodities as raw materials and industrial auxiliary materials, does not at all contain provisions for the import of salt for consumption, although the material appears in the regulation of the Ministry of Industry and Trade No. 63 of 2019 concerning the Salt Import Trading System.

Recommendations given in this research are first, there must be a legal instrument that guarantees the

linearity of the content material that is able to guard the content of the legislation so that it does not deviate from the initial design. Second, this research shows that the judicial review instrument is not effective enough to guarantee the linearity of the content of the legislation. Third, the State Administrative Courts with very narrow and limited absolute competence are inadequate to review the government's actions as a whole, thus legal construction of the competence of the State Administrative Courts needs to be reviewed so that they are able to represent the function of administrative law as control over government actions and the use of authority.

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